

## Environmental Protection Agency

## § 33.212

status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

### **§ 33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?**

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under § 33.205 or § 33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 1230T, Washington, DC 20460.

(c) The appeal or challenge must be sent to the Director of OSDBU (Director) within 90 days of the date of EPA OSDBU's MBE or WBE certification determination. The Director may accept an appeal or challenge filed later than 90 days after the date of EPA OSDBU's MBE or WBE certification determination if the Director determines that there was good cause, beyond the control of the appellant or challenger, for the late filing of the appeal or challenge.

(d) No specific format is required for an appeal or challenge. However, the appeal or challenge must include information and arguments concerning why EPA OSDBU's MBE or WBE certification determination should be reversed. For challenges in which a third party questions EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209, the third party must also send a copy of the challenge to the entity whose MBE or WBE certification is being

questioned. In addition, the Director shall request information and arguments from that entity as to why EPA OSDBU's determination to certify the entity as an MBE or WBE should be upheld.

(e) The Director makes his/her appeal or challenge decision based solely on the administrative record and does not conduct a hearing. The Director may supplement the record by adding relevant information made available by any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

### **§ 33.212 What conduct is prohibited by this subpart?**

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent, or deceitful statements or representations, or indicates a serious lack of business integrity or honesty, may be subject to sanctions under § 33.105.